

THE STATE OF MAHARASHTRA & ANR.

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v.

KISHOR M. GADHAVE PATIL & ORS.

(Civil Appeal No. 11199 of 2017)

SEPTEMBER 05, 2017

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[R.K. AGRAWAL AND ABHAY MANOHAR SAPRE, JJ.]

Maharashtra Law Officers (Appointments, Conditions of Service and Remuneration) Rules, 1984 – r.30(5)(6) – Respondents were appointed by the State Government as Additional Government Pleaders (Addl.GP)/Assistant Government Pleaders (AGP)/Additional Public Prosecutors (APP) for a Bench of the High Court – Respondents accepted their appointment and started functioning by discharging their duties in Courts in terms of their appointment orders – However, the State Government passed an order and cancelled the appointments of all the respondents by taking recourse to the powers u/r.30(5) of the Rules – Aggrieved, respondents filed writ petition before High Court, which quashed the order of cancellation – On appeal, held: During the pendency of the appeal, the term of respondents on their respective posts had expired on different dates – Now, that even if the impugned order of High Court is upheld, the respondents would still not be entitled to continue anymore on the post because their respective terms have come to an end by efflux of time during the pendency of the appeal – Further, if the cancellation order is upheld, the question of granting any relief to respondents would not arise – In the facts and circumstances of the case, it would be just and proper and in the interest of justice to modify the order of cancellation by treating the same to have been passed u/r.30(6) of the Rules – Since, order has been modified by treating it to have been passed u/r.30(6), the State directed to ensure compliance of r.30(6) and accordingly pay one month's retainer in lieu of notice period to each respondent as was fixed in their respective appointment letters – Service Law – Cancellation of appointments.

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Disposing of the appeal, the Court

HELD: 1. Even if the impugned order of the High Court is upheld, the respondents would still not be entitled to continue

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A any more on the post because their respective terms have come
to an end by efflux of time during the pendency of this appeal. It
is also not in dispute that the said terms were not extended by
the State and rather curtailed before its expiry period by issuing
the cancellation order which was impugned in the writ petition
B before the High Court. It is also not in dispute that if the
cancellation order is upheld, the question of granting any relief
to respondents would not arise. [Para 11] [1024-G-H; 1025-A-B]

2. Having regard to the background facts, nature of
controversy, the subsequent events and the consequences which
are likely to result due to subsequent events occurring in the
C case, it would be just and proper and in the interest of justice to
modify the order of cancellation by treating the same to have
been passed under Rule 30(6) of the Maharashtra Law Officers
(Appointments, Conditions of Service and Remuneration) Rules,
1984. In other words, the interest of justice would be fully met if
D the cancellation order is held to have been passed under to Rule
30(6). [Para 19] [1026-D-E]

3. Since, the order dated 28.08.2015 has been modified by
treating it to have been passed under Rule 30(6), the State is
directed to ensure compliance of Rule 30(6) and accordingly pay
E one month's retainer in lieu of notice period to each respondent
as was fixed in their respective appointment letters. [Para 20]
[1026-F]

4. The State would be free to consider the cases of any of
the respondents for their appointment on any of the post in future,
F in case, if the State so desires and while so considering, the
cancellation order dated 28.08.2015 originally passed by the State
and now modified by this Court including any observations made
by the High Court would not come in their way. [Para 22] [1026-
G-H]

G *Kumari Shrilekha Vidyarthi & Ors. v. State of U.P. &*
Ors. (1991) 1 SCC 212; [1990] 1 Suppl. SCR 625 ;
State of U.P. & Anr. v. Johri Mal (2004) 4 SCC 714 :
[2004] 1 Suppl. SCR 560 ; *State of U.P. & Ors. v. Ajay*
Kumar Sharma & Anr. (2016) 15 SCC 289 – referred
to.

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Case Law Reference

[1990] 1 Suppl. SCR 625	referred to	Para 13
[2004] 1 Suppl. SCR 560	referred to	Para 13
(2016) 15 SCC 289	referred to	Para 13

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CIVIL APPELLATE JURISDICTION : Civil Appeal No.11199
of 2017.

From the final Judgment and Order dated 16.12.2015 passed by
the High Court of Judicature of Bombay, Bench at Aurangabad in Writ
Petition No.8951/2015.

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Kunal A. Cheema, Addl. Govt. Adv., Bishant Ramakantrao
Katneshwarkar, Adv. for the Appellants.

J.P. Cama, Sr. Adv., Rahul Chitnis, Aaditya A. Pande, Chander
Shekhar Ashri, Dilip Annasaheb Taur, Amol V. Deshmukh, Advs. for the
Respondents.

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The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

2. This appeal is filed against the final judgment and order dated
16.12.2015 passed by the High Court of Judicature of Bombay Bench at
Aurangabad in Writ Petition No. 8951 of 2015 whereby the High Court
allowed the writ petition filed by the respondents herein and made the
'Rule' absolute.

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3. The controversy involved in the appeal, which due to subsequent
events, remains confined to very narrow issues surviving for
consideration. However to appreciate what is survived, few relevant
facts need mention below.

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4. The appellants herein-State of Maharashtra and Joint Secretary,
Law & Judiciary Department were the respondents whereas the
respondent Nos. 1 to 15 herein were the writ petitioners before the
High Court in a writ petition out of which this appeal arises.

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5. The respondents (Total 15) are advocates by profession and
have been practicing in various Courts including Bench of the High Court

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A at Aurangabad (MH). The respondents were appointed by the State Government as Additional Government Pleaders (Addl.GP)/Assistant Government Pleaders(AGP)/Additional Public Prosecutors(APP) for the Bench of the High Court at Aurangabad by order dated 05.10.2013 (Annexure-P-1). Similar orders of appointment were issued by the State on different dates in relation to some respondents.

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6. The respondents accepted their appointment and started functioning by discharging their duties as Addl.GP/AGP/APP in Courts in terms of their appointment orders. However, by order dated 28.08.2015, the State Government cancelled the appointments of all the respondents w.e.f 28.08.2015 by taking recourse to the powers under Rule 30(5) of the Maharashtra Law Officers (Appointments, Conditions of Service and Remuneration) Rules 1984 (hereinafter referred to as “the Rules”).

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7. The respondents, felt aggrieved of the order dated 28.08.2015, challenged its legality and correctness in the writ petition out of which this appeal arises.

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8. By impugned order, the High Court allowed the respondents’ writ petition and quashed the order of cancellation dated 28.08.2015 which has given rise to filing of this appeal by way of special leave by the State of Maharashtra.

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9. By interim order dated 29.01.2016, this Court stayed the operation of the impugned order of the High Court. As a result, the cancellation order dated 28.08.2015 continued to remain in operation against the respondents.

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10. It is pertinent to mention here, as stated by the learned counsel appearing for the parties, that during the pendency of the appeal, the term of the respondents on their respective posts expired on different dates such as, 05.06.2010, 09.06.2010, 16.08.2010, 05.10.2010, 09.10.2016 and 22.10.2016.

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11. It is with this background, the question arises for consideration is as to what orders need to be passed while disposing of the appeal. One cannot dispute that even if the impugned order is upheld, the writ petitioners (respondents herein) would still not be entitled to continue any more on the post because their respective terms have come to an

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end by efflux of time during the pendency of this appeal. It is also not in dispute that the said terms were not extended by the State and rather curtailed before its expiry period by issuing the cancellation order which was impugned in the writ petition. It is also not in dispute that if the cancellation order is upheld, the question of granting any relief to respondents would not arise.

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12. Heard Mr. Kunal A. Cheema, learned Addl. Government Pleader for the appellants and Mr. J.P. Cama, learned senior counsel and Mr. Rahul Chitnis, learned counsel for the respondents.

13. Learned counsel for the appellants supported the cancellation order dated 28.08.2015 and contended that keeping in view the law laid down by this Court on the issue in question in several cases such as **Kumari Shrilekha Vidyarthi & Ors. Vs. State of U.P. & Ors.**, (1991) 1 SCC 212 **State of U.P. & Anr. Vs. Johri Mal**, (2004) 4 SCC 714 and **State of U.P. & Ors. Vs. Ajay Kumar Sharma & Anr.**, (2016) 15 SCC 289, the High Court should not have quashed the cancellation order.

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14. Learned counsel for the respondents, however, urged that the cancellation order dated 28.08.2015 having been passed under Rule 30(5) by the State, the same was rightly struck down by the High Court as being stigmatic and punitive in nature.

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15. Learned counsel in the alternative submitted that due to stay operating against the respondents, they could not work on their respective posts though otherwise they were ready to discharge their duties. It was, therefore, urged that the respondents be paid their entire remuneration till the expiry of their respective terms.

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16. It was also his alternative submission that in any event, the respondents be paid their remuneration from the date of stay granted by this Court (29.01.2016) till the date of expiry of their respective terms.

17. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to dispose of the appeal as under.

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18. Rules 30 (5) and (6) of the Rules read as under:

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A **“30. Period of Appointment.**

(5) A Law Officer shall be liable to be removed from his office at any time, if he is guilty of any act or conduct which, in the opinion of Government, in the Law and Judiciary Department, is incompatible with his duties as such Law Officer. The decision of Government in the Law and Judiciary Department in such cases shall be final.

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(6) Notwithstanding anything contained in sub-rules(2) and (3), but save as otherwise provided in sub-rule(5), the appointment of any Law Officer, which is at the pleasure of the Government may at any time, be terminated by Government in the Law and Judiciary Department by giving him one month’s notice or, where any retainer is payable to such Law Officer, be terminated forthwith by paying him one month’s retainer in lieu of such notice.”

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19. Having regard to the background facts, nature of controversy, the subsequent events and the consequences which are likely to result due to subsequent events occurring in the case, we consider it just and proper and in the interest of justice to modify the order of cancellation dated 28.08.2015 by treating the same to have been passed under Rule 30(6) of the Rules. In other words, the interest of justice would be fully met if the cancellation order dated 28.08.2015 is held to have been passed under to Rule 30(6).

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20. Since we have modified the order dated 28.08.2015 by treating it to have been passed under Rule 30(6), the State is directed to ensure compliance of Rule 30(6) and accordingly pay one month’s retainer in lieu of notice period to each respondent as was fixed in their respective appointment letters.

21. Let the amount be paid to each respondent within 3 months from the date of receipt of this order.

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22. We also observe that the State would be free to consider the cases of any of the respondents for their appointment on any of the post in future, in case, if the State so desires and while so considering, the cancellation order dated 28.08.2015 originally passed by the State and now modified by this Court including any observations made by the High Court would not come in their way.

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23. With these observations and the directions, this appeal stands A
finally disposed of leaving the question of law raised by the parties in the
appeal open.

Ankit Gyan

Appeal disposed of.